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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CHRISTOPHER WAGNER, an
individual,

Plaintiff,

v.

DIGITAL PUBLISHING
CORPORATION, a Delaware corporation,
et al.

Defendants.

No. 13-cv-04952-WHA

**NOTICE OF SUPPLEMENTAL
AUTHORITY IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
(DKT. 13)**

The Honorable William A. Alsup

Hearing Date: March 6, 2014

Time: 8:00 a.m.

Location: Courtroom 8 - 19th Floor

Defendants respectfully submit that the following supplemental authority, copies of which are attached, should be considered in connection with Defendants' response in opposition to Plaintiff's motion for partial summary judgment:

1. *XL Marketing Corp. et al. v. Kirby*, No. 4:11-cv-05107 (N.D. Cal. Jan. 15, 2014) (Hamilton, J.): Attorneys for Plaintiff Christopher Wagner filed a near word-for-word copy of the pending motion for partial summary judgment (Dkt. 13) in another matter involving identical legal issues. *See* Declaration of Leeor Neta, dated February 7,

2014, ¶ 2. The Honorable Phyllis J. Hamilton of this Court denied the near-identical motion for the same reasons offered by the Defendants in this matter. Specifically, the court found that the near-identical motion sought an “advisory opinion”, i.e., “a ruling regarding the scope of federal CAN-SPAM preemption in the abstract, and presents no actual facts[.]” A true and correct copy of the order denying the near-identical motion is attached hereto as **Exhibit A**.

2. During the hearing, Judge Hamilton stated emphatically: “There’s no way I’m going to give you an advisory opinion on the preemption issue.” The Court also stated, “Mr. Balsam, I’m totally perplexed as to what we’re doing here and why you really are seeking an advisory opinion from the Court.” A true and correct copy of the transcript of these proceedings is attached hereto as **Exhibit B**.

Respectfully submitted February 10, 2014.

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